

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	
)	No. 4:21-CR-5-O
THE BOEING COMPANY,)	
)	
<i>Defendant.</i>)	
)	

**THE BOEING COMPANY’S RESPONSE TO MOTION
FILED BY FAMILY MEMBERS OF PASSENGERS OF LION AIR FLIGHT 610 AND
ETHIOPIAN AIRLINES FLIGHT 302**

Family members of passengers on Lion Air Flight 610 and Ethiopian Airlines Flight 302 (“Movants”) have filed a motion for relief under the Crime Victims’ Rights Act (“CVRA”), asking this Court to require the Department of Justice (“DOJ”) to comply with the CVRA and confer with counsel for Movants, and also order “such other remedies as may be fair, just and equitable.” Dkt. 138 at 7.

Boeing profoundly regrets the accidents and their immeasurable impact on the families and loved ones of those lost on Lion Air Flight 610 and Ethiopian Airlines Flight 302. While Boeing understands that nothing can ever fully mend the losses suffered by those affected by the accidents, Boeing has strived to assist the families by providing compensation through the fund established under the Deferred Prosecution Agreement (“DPA”), civil settlements, and an additional compensation fund provided by the Company. Further, Boeing has enhanced enterprise safety efforts, strengthened its culture of safety, quality, and transparency, and will continue its relentless pursuit of these commitments in the future. In addition, Boeing has devoted substantial effort and

resources to fulfill its obligations under the DPA, under the supervision of DOJ, that will further bolster Boeing's safety and compliance programs.¹

Now—nearly two years into the DPA's term—Movants assert standing and seek unspecified relief under the CVRA. Boeing acknowledges that the Court has found that the Crime Victims' Representatives ("Representatives"),² have standing under the CVRA, *see* Dkt. 116, and that Movants are similarly situated to the Representatives with respect to the CVRA's causation analysis. For completeness of the record and to preserve the Company's rights, however, Boeing continues to maintain that Movants lack standing under the CVRA. As DOJ and Boeing argued before the Court with respect to the Representatives, the offense charged in the DPA—withholding information from the FAA AEG—is not a direct and proximate cause of the harm suffered by Movants. The two MAX accidents are too attenuated in time and causal chain from the limited and specific offense charged in the DPA to satisfy the CVRA's causation requirement. *See also* Dkt. 58. These arguments are equally applicable to Movants, and Boeing expressly incorporates them herein.

Although Movants request that this Court impose remedies for DOJ's alleged violation of their CVRA rights, Movants do not specify the relief they seek as to Boeing. *See* Dkt. 138. Movants state that the remedies they seek "are different than those sought" by the Representatives and "have not been requested previously." Dkt. 138 at 7. Movants do not, however, articulate

¹ Boeing has previously briefed the Company's extensive efforts to comply with the rigorous terms of the DPA. *See* Dkt. 4 at 9–14; Dkt. 129 at 10–11.

² Boeing adopts the terminology this Court used in its October 30, 2022 Order to refer to the Representatives, but expressly preserves all objections and reserves all rights to appeal any and all of the Court's rulings made in the course of these proceedings, including with respect to this Court's determination of the Representatives' standing under the CVRA and the process it used to reach that determination.

what they are requesting or how it is different from the relief sought by others. Boeing therefore is unable to address Movants' request for relief at this time; however, should Movants clarify their requested relief through subsequent filings or statements to the Court, Boeing respectfully requests the opportunity to respond to such request at that time. And to the extent Movants' current request for relief seeks supervision, modification, or rejection of the DPA, this Court should deny Movants' request for the same reasons Boeing (and DOJ) have briefed with respect to the Representatives. *See* Dkt. 62; Dkt. 129.³

Boeing respectfully requests that Movants' motion be denied for the reasons stated above.

³ Boeing further notes that the Movants filed their request for relief under the CVRA over 11 months after the Representatives did (and over 22 months after the DPA went into effect), *see* Dkt. 4; Dkt. 15, exacerbating the timeliness concerns Boeing has noted with respect to the Representatives' request for relief, *see* Dkt. 129, at 7–8, 10–11. Movants' delay also creates a strong case for applying the doctrine of laches to bar any remedies Movants may seek as to Boeing, *see* Dkt 62 at 13–15; Dkt. 129 at 8.

Respectfully submitted,

McGUIREWOODS LLP

/s/ Benjamin L. Hatch

Benjamin L. Hatch
VA Bar No. 70116
bhatch@mcguirewoods.com

Brandon M. Santos
VA Bar No. 75380
bsantos@mcguirewoods.com

McGuireWoods LLP
888 16th Street N.W., Suite 500
Black Lives Matter Plaza
Washington, DC 20006
Tel: 757.640.3727
Fax: 757.640.3947

Counsel for The Boeing Company

KIRKLAND & ELLIS LLP

/s/ Mark R. Filip

Mark R. Filip
IL Bar No. 6226541
mark.filip@kirkland.com

Craig S. Primis
DC Bar No. 454796
cprimis@kirkland.com

Kirkland & Ellis LLP
1301 Pennsylvania Avenue NW
One Freedom Plaza
Washington, DC 20004
Tel: 202.879.5000
Fax: 202.654.9645

Jeremy Fielding
Texas State Bar No. 24040895
Jeremy.fielding@kirkland.com

Kirkland & Ellis LLP
1601 Main Street
Dallas, Texas 75201
Tel; (214) 972-1770
Fax: (214) 972-1771

Counsel for The Boeing Company

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2022, the foregoing was filed with the Clerk of the United States District Court for the Northern District of Texas using the CM/ECF system. The system will serve counsel of record.

/s/ Benjamin L. Hatch
Benjamin L. Hatch